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U.S. BANKRUPTCY COURT
NORTH DAKOTA

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Attorneys for Secured Creditor
CATHAY BANK

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re
MARTIFER AURORA SOLAR, LLC, a
Nevada limited liability company.

Debtor.

- ☐ Affects Martifer Aurora Solar, LLC
☐ Affects Martifer Solar USA, Inc.
☒ Affects All Debtors

Case Nos. BK-S-14-10355-abl and BK-S-14-10357-abl

Jointly Administered Under Case No. BK-S-14-10355-abl

Chapter 11

**DECLARATION OF EILEEN LEWIS IN
SUPPORT OF CATHAY BANK'S
MOTION FOR AN ORDER DIRECTING
THE APPOINTMENT OF A CHAPTER 11
TRUSTEE IN THESE BANKRUPTCY
CASES PURSUANT TO 11 U.S.C. §
1104(a) OR, ALTERNATIVELY,
CONVERTING OR DISMISSING THESE
BANKRUPTCY CASES TO CASES
UNDER CHAPTER 7 OF THE
BANKRUPTCY CODE PURSUANT TO 11
U.S.C. § 1112(b)**

Hearing Date: To Be Determined
Hearing Time: To Be Determined

FRANZEL ROBINS BLOOM & CSATO, L.C.
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1 I, Eileen Lewis, declare:

2 1. I am a Vice President for Cathay Bank, a California banking corporation ("Bank"), and
 3 am employed by the Bank at its offices located in El Monte, California. I have been employed by the
 4 Bank for approximately four years and as a banker in various capacities for the past 33 years. Except
 5 where otherwise noted, I have personal knowledge of the matters set forth in this declaration and, if
 6 called upon as a witness, I could and would testify competently thereto.

7 2. I submitted a Declaration in Support of the Bank's Demand for Adequate Protection
 8 ("Prior Declaration"), which was filed with the Court on January 27, 2014, and is incorporated by
 9 reference as if fully set forth herein [ECF No. 60]. All capitalized terms not defined herein have the
 10 meanings my Prior Declaration ascribes to them.

11 3. Beginning in late August 2013, and repeatedly thereafter, the Bank clearly and
 12 unequivocally informed the Borrowers that the Bank did not consent to use of the Collateral
 13 (including collections of accounts receivable) except on a day-to-day and case-by-case basis.¹ Over
 14 the next several months in the context of workout negotiations, but still on a day-to-day basis, the
 15 Bank for the most part approved Martifer USA's daily requests to use cash for its operating needs.

16 4. In addition, while consent was not required, on several occasions the Bank obtained
 17 Martifer USA's consent to apply portions of the collateral collections and proceeds held in its account
 18 with the Bank ("Cathay Account") to reduce the outstanding Loan balance. Specifically, with Martifer
 19 USA's consent, the Bank applied collateral collections and proceeds in the Cathay Account to reduce
 20 the Loan principal balance on a weekly basis from October 2, 2013, through November 27, 2013, by a
 21 total of \$1,700,000.

22 5. In addition to the Borrowers' initial defaults under the Loan Documents enumerated in
 23 my Prior Declaration, the Borrowers further defaulted under the Loan Documents by failing to pay the
 24 outstanding Loan balance in full on or before the November 30, 2013, maturity date. On December 4,

25
 26 ¹ For example, on August 26, 2013, Michael Gerard Fletcher of Frandzel Robins Bloom & Csato, L.C., counsel the Bank, sent an e-mail to Avi Muhtar, the Debtors' general counsel, notifying
 27 the Debtors of the Bank's non-consent to use of the Collateral and demand that the Debtors segregate,
 28 sequester, and account for the Collateral. A true and correct copy of that e-mail (on which I was copied) is attached hereto as Exhibit "1."

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2013, as workout negotiations reached an impasse and the Bank became increasingly concerned about the Loan, the Bank applied \$300,000 of collateral collections and proceeds in the Cathay Account to reduce further the outstanding Loan balance.² On December 11, 2013, the Bank again applied \$100,000 of collateral collections and proceeds in the Cathay Account to reduce further the outstanding Loan balance.³ On December 13, 2013, Martifer USA requested that the Bank consent to payment of a \$70,206.70 rebate application deposit to Oncor Electric Delivery Co., LLC ("Oncor"), in connection with a joint project between SoCore Installation Services, LLC and Martifer USA for Oncor. The Bank never consented to the payment.

6. Within days, the Bank noticed that deposits to the Cathay Account dropped off precipitously.⁴ As a result, on January 10, 2014, James Crossland (a consulting expert engaged by the Bank's counsel) conducted an onsite audit of the Borrowers' books and records. Mr. Crossland's audit revealed that after the Bank declined to approve the payment to Oncor, Martifer USA began directing all deposits to an account with California Bank & Trust ("CB&T Account"). The audit also revealed that on December 17, 2013, Martifer USA unilaterally made the payment to Oncor without the Bank's consent.

7. The Borrowers' clandestine diversion of the Bank's collateral to the CB&T Account was in direct violation of the BLA, which (as noted in my Prior Declaration) requires the Borrowers to maintain their primary operating checking account with the Bank (with the Bank authorized to debit the account for amounts due under the Loan) at all times while the Loan is outstanding. The Bank knew the CB&T Account existed since September 2013. At that time, Mr. Muhtar told the Bank that the CB&T Account was "an old account that...hasn't been actively used by Martifer for quite some time and isn't being actively used [and] remained open because there was a concern that the company's

² Martifer USA had only consented to the Bank applying \$50,000.00 to reduce the Loan balance on December 4, 2013.

³ As with the December 4, 2013, application of funds, Martifer USA had only consented to the Bank applying \$50,000.00 to reduce the Loan balance on December 11, 2013.

⁴ Between December 17, 2013, and January 16, 2014, deposits to the Cathay Account substantially decreased when compared to prior account activity with the largest individual deposits to the Cathay Account during that time ranging from \$1,170.44 to a maximum of \$5,000.00.

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1 clients would continue to mistakenly use this old account notwithstanding notice that had been
 2 provided to them of the change of our account." A true and correct copy of e-mail correspondence in
 3 which Mr. Muhtar made these representations (on which correspondence I was copied) is attached
 4 hereto as Exhibit "2."

5 8. I and my colleagues at the Bank accepted Mr. Muhtar's explanation and relied on his
 6 representations with regard to the CB&T Account in continuing to negotiate with the Debtors
 7 regarding a possible Loan workout.

8 9. A primary topic of discussion during workout negotiations was Martifer USA's
 9 relationship with Alternative Energy Financing LLC ("AEF") and CBS Broadcasting, Inc. ("CBS").
 10 Beginning in November 2011 I am informed and believe that AEF entered into contracts with CBS for
 11 installation of solar power systems at CBS' real property in Los Angeles, California ("CBS Project"),
 12 and entered into separate contracts with Martifer USA for the construction of various phases of the
 13 CBS Project.

14 10. On January 2, 2014, without the Bank's knowledge or consent, I am informed and
 15 believe that Martifer USA, AEF, and various other parties entered into a Settlement Agreement with
 16 Mutual Releases ("AEF Settlement Agreement"). The Debtors did not disclose the AEF Settlement
 17 Agreement in any of their numerous initial pleadings and declarations filed with the Court, and neither
 18 I nor my colleagues at the Bank knew Martifer USA had entered into the AEF Settlement Agreement
 19 until Martifer USA filed its Periodic Report and schedules on February 20, 2014.

20 I declare under penalty of perjury under the laws of the United States of America that the
 21 foregoing is true and correct and that this declaration was executed on March 3, 2014, at El Monte,
 22 California.

23
 24 
 25 Eileen Lewis

EXHIBIT 1

From: Michael Fletcher [mfletcher@frandzel.com]
Sent: Monday, August 26, 2013 3:44 PM
To: Avi Muhtar
Cc: Gregory Badura; Eileen Lewis; Mercedes Martin
Subject: Martifer: Demand to Sequester All Cash Collected

Dear Mr. Muhtar: By letter dated August 15, 2013, the Bank notified the borrower Martifer Solar USA of its defaults under the loan agreements. To date neither we nor the Bank have received the requested financial documentation or the cash flow projections.

According, the Bank demands that Martifer cease using any and all collections, and/or any money on deposit anywhere, all of which constitute the Bank's collateral proceeds. All such money must be segregated and sequestered and accounted for to the Bank.

Upon receipt of the requested financial information, documents, and projections, the Bank will consider whether and to what extent to consent to the further use by Martifer of the Bank's collateral proceeds. BUT NOT UNTIL THEN.

No consent to use of the Bank's collateral proceeds is hereby permitted, and none will be except in a further writing from the Bank. We expect immediate compliance and confirmation of such compliance by return email.

Michael Fletcher

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F R
B C
305/405
10/11/13


EXHIBIT 2

From: Michael Fletcher [mfletcher@frandzel.com]
Sent: Monday, September 30, 2013 2:06 PM
To: Avi Muhtar
Cc: Glenn C. Shrader; 'Gregory Badura'; 'Eileen Lewis'
Subject: RE: Martifer Credit Application Information 09-16-13

Avi: The Bank has accepted your explanations for the other account, and trusts that Martifer understands that it is not to have accounts at banks other than Cathay.

Thanks for the prompt response.

Michael Fletcher
FRANDZEL ROBINS BLOOM & CSATO, L.C.
6500 Wilshire Boulevard, 17th Floor
Los Angeles, CA 90048-4920
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F R
B C
30 YEARS
OF SERVICE

From: Avi Muhtar [<mailto:amuhtar@martifersolarusa.com>]
Sent: Friday, September 27, 2013 7:12 PM
To: Michael Fletcher
Cc: Glenn C. Shrader; 'Gregory Badura'; 'Eileen Lewis'
Subject: RE: Martifer Credit Application Information 09-16-13

By way of further background, the account initially remained open because there was concern that the company's clients would continue to mistakenly use this old account notwithstanding notice that had been provided to them of the change of our account. By March / April, the majority of account activity came to a stop. Since April, there have been two inadvertent deposits made into the account. One was for \$1,356 from Sunpower – a client that continued to use the wrong account. The second was the \$950 amount previously referenced which I'm informed was made as result of a Martifer employee refunding sums to Martifer.

Please find attached additional bank statements reflecting the same.

From: Avi Muhtar
Sent: Friday, September 27, 2013 6:24 PM
To: 'Michael Fletcher'

Cc: Glenn C. Shrader; 'Gregory Badura'; 'Eileen Lewis'

Subject: RE: Martifer Credit Application Information 09-16-13

Hi Michael, this is an old account that I am informed has stayed open for no particular purpose. I understand that it hasn't been actively used by Martifer for quite some time and isn't being actively used. Here is the most recent account statement showing a current balance of \$3,606.12 and a previous balance of \$3,176.74. This shows the only recent deposit that was made into the account was for \$950.00. Please let me know what else I can do or provide to alleviate all concerns.

From: Michael Fletcher [<mailto:mfletcher@frandzel.com>]

Sent: Friday, September 27, 2013 5:33 PM

To: Avi Muhtar

Cc: Glenn C. Shrader; 'Gregory Badura'; 'Eileen Lewis'

Subject: Martifer Credit Application Information 09-16-13

Avi: We received the attached by email. Why is Martifer showing California Bank & Trust as a banking reference? Why does Martifer apparently have an account there? That is a violation of the underlying lending relationship and raises the concern and the inference that Cathay collateral proceeds collections have been and are being diverted. We need an immediate explanation.